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TC 3600

In re Application of :
Wilhelm Geis, et al. : **DECISION ON PETITION**
Application No. 09/284,311 : **TO WITHDRAW THE**
Filed: April 26, 1999 : **HOLDING OF ABANDONMENT**
For: **DRIVING DEVICE**

This is a supplemental decision on applicants' renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO) on August 21, 2004. This supplemental decision corrects the instructions in the final paragraph of a prior decision mailed from this Office on October 6, 2004.

The petition is **GRANTED**.

A review of the file record reveals that the application became abandoned for failure to respond to the Office action mailed to applicants on December 1, 1999 and a Notice to that affect was mailed June 29, 2000.

The present petition contends that applicants never received the Office action.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of January 17, 2002. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993). The petition filed March 3, 2004 failed to meet requirement (3) above.

Applicants' renewed petition provides a copy of the docket record showing all actions due by practitioner's office at and around the due date of March 1, 2000. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53. Applicants further provided a statement that applicants' representative did not change office locations until December 2001, and therefore the petition is not based on an incorrect address.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status and to redate and remail the Office action, originally mailed December 1, 1999, based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.

A handwritten signature in cursive script, reading "Randolph A. Reese", is written over a horizontal line.

Randolph A. Reese
Special Programs Examiner
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RAR/rwg: 1/31/05